

STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE

2009 Me. Rules 16

Effective: August 1, 2009

All of the Justices concurring therein, the following amendment to the Maine Rules of Civil Procedure is hereby adopted to be effective on the date indicated above. The specific rules amendment appears below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 91 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 91. PROCEEDINGS IN FORMA PAUPERIS FOR WAIVER OF
PAYMENT OF FEES OR COSTS**

(a) (1) Application. Any person who intends to (i) bring a civil action under these rules, ~~or to (ii) file any motion requiring service under Rule 4, or (iii) file any motion requiring payment of any fee,~~ may, without fee, file an application in the court in which such action ~~or motion~~ is to be brought, ~~or such motion is to be filed~~ asking for leave to proceed ~~in forma pauperis~~ without payment of fees or costs. The reference to “motion” shall include jury requests or any other filing that requires payment of a fee in the trial court.

(2) Affidavit. ~~The~~ Such application shall be accompanied by an affidavit of the plaintiff or moving party ~~setting forth~~ stating (i) the person’s monthly income and necessary monthly expenses; (ii) that the person possesses no other source from which filing or service fees may reasonably be paid; (iii) if the person is receiving poverty-based public assistance income identify the government program

and the nature and the duration of the assistance; and (iv) that the action is brought, or the motion is filed, in good faith. . The affidavit shall be kept separate from the other papers in the case and kept confidential. The affidavit may be disclosed to any party to the action, but shall not be available for public inspection, except by order of the court.

(3) Presumption of Inability to Pay. There shall be a presumption that a moving party is without sufficient funds to pay required fees or costs if the moving party's affidavit states that the person's income is derived from poverty-based public assistance programs.

(b) Waiver of Complaint Filing Fee. An application for waiver of the filing fee shall be filed with the complaint. The action shall thereupon be entered upon the docket. If the court finds that the action is not frivolous and has been brought in good faith, and if the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived. If the court denies the application, the action shall be dismissed without prejudice, unless within seven days after the denial the plaintiff pays the fee to the clerk.

(c) Payment of Service Costs. An application for payment of service costs shall be filed with the complaint or motion. If the court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs to be paid as an administrative expense of the Superior Court or the District Court as the case may be. The court shall pay cost for service of process only after the party seeking such payments certifies that it has attempted to accomplish service by agreement or by means that do not require payment of costs except for postage, and those efforts have not been successful in completing service.

(d) Waiver of Motion Filing Fee. An application for waiver of a motion filing fee shall be filed with the motion unless an application for waiver of payment of fees or costs has previously been granted to the moving party. The motion shall thereupon be accepted for filing and entered upon the docket. If the court finds that (i) the motion is not frivolous and has been brought in good faith, and (ii) the moving party is without sufficient funds to pay the motion filing fee, it shall order that the fee be waived. If the court denies the application, the motion shall be dismissed without prejudice, unless within seven days after the denial the moving party pays the fee to the clerk.

(e) Costs; Reimbursement. If the plaintiff or moving party prevails, any fee ~~or service~~ costs paid under subdivision ~~(b) or~~ (c) of this rule may be taxed as costs against the opposing party in favor of the s State, if the court finds ~~that~~ that party is able to pay ~~such fee or those~~ costs. Before accepting a complaint or motion for filing with the fee waived or disbursing funds for service costs, the clerk shall cause the plaintiff or moving party to sign an agreement to ~~reimburse~~ repay the court for any fees or costs so that have been waived or paid, if at any time during the pendency of the action the party becomes or is discovered to be financially able to ~~make such reimbursement~~ repay those funds. The State Court Administrator is authorized to proceed by execution or action to recover for the appropriate court account all fees or costs which any party becomes liable to pay or reimburse under this subdivision, if such payment or reimbursement is not made voluntarily upon demand.

~~(e) Removal From the District Court. Any defendant or other party who intends to remove an action from the District Court to the Superior Court under Rule 76C may move for leave to proceed in forma pauperis. The motion shall be filed with the party's answer or reply, and shall be accompanied by the affidavit required by subdivision (a) of this rule. If the court finds that the defense of the party seeking removal is made in good faith, and that the party is without sufficient funds to pay the fees and costs required by Rule 76C, it shall order that those fees and costs be waived and that the clerk forward the action to the Superior Court, where the action shall be entered, and shall proceed as though the fees had been paid.~~

(f)(1) Appeal From District or Superior Court. A party seeking to appeal to the Superior Court or the Law Court may file or renew an application for leave to proceed ~~in forma pauperis~~ without payment of fees or costs as provided in subdivision (a) of this rule. If the court from which the appeal is taken finds that the appeal is brought in good faith and is not frivolous and that the applicant is without sufficient funds to pay all or part of the costs of entering the appeal, it shall order all or part of those costs to be waived ~~or paid as an administrative expense of the District or Superior Court as the case may be~~. The court may enter such orders limiting the record on appeal as it deems appropriate. The provisions of subdivision (e) of this rule apply to proceedings under this subdivision.

(f)(2) Copy of Electronic Recording. When the hearing that is subject to the appeal was electronically recorded, and the court finds that all or a portion of the transcript of the hearing is necessary to support the appeal, a copy of the recording of the hearing, in lieu of a paper transcript, shall be filed as part of the record

pursuant to M.R. App. P. 6, except that a paper transcript shall be prepared for any child protective proceeding on appeal from the District Court. When the hearing that is subject to the appeal was recorded by an official court reporter, the court shall not pay for a transcript to support the appeal, and the court shall direct the parties to prepare and submit to it an agreed statement of the record pursuant to M.R. App. P. 5(f).

Advisory Note

The amendment makes several changes to Rule 91:

First, it removes the Latinism “In Forma Pauperis” from the Rule and makes other editing changes to make the Rule easier to read and understand.

Second, it adds a provision that the financial affidavit be kept confidential and separate from the case file. The affidavit could be viewed by any other party, but otherwise would be available only by court order.

Third, it adds provisions to clarify that motion fees, jury fees and other court filing fees that may be imposed during litigation may be waived.

Fourth, it requires that before service costs are ordered to be paid, the applicant demonstrate that low cost or no costs options for service have been attempted without success.

Fifth, it eliminates the reference in current subdivision (e) to waiver of costs for removal of cases from District Court, as the removal fee was eliminated at the time that identical filing fees were adopted for District Court and Superior Court actions.

2. This amendment shall be effective August 1, 2009.

Dated: July 9, 2009

FOR THE COURT¹

/s/

LEIGH I. SAUFLEY
Chief Justice

ROBERT W. CLIFFORD
DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all of the Justices concurring therein.